

INTRODUCTION

The "Justice Case" was officially designated United States of America *vs.* Josef Altstoetter, et al. (Case 3). Of the sixteen defendants indicted, nine were officials in the Reich Ministry of Justice. The two persons who held the position of Reich Minister of Justice during the Hitler regime, Franz Guertner and Georg Thierack, were both dead before the indictment was filed. Between Guertner's death in January 1941 and Thierack's appointment in August 1942, the defendant Schlegelberger served as Acting Reich Minister of Justice. The defendants Schlegelberger, Rothenberger, and Klemm each had held the position of Under Secretary ("Staatssekretaer", also translated as State Secretary) in the Reich Ministry of Justice. Two other officials of this Ministry were indicted but not tried: the defendant Westphal committed suicide in Nuernberg jail after indictment and before the opening of the trial; a mistrial was declared as to the defendant Engert, whose physical condition prevented his presence in court for most of the trial. The defendants who were not officials of the Reich Ministry of Justice included the chief public prosecutor of the People's Court and several prosecutors and judges of both the Special Courts and the People's Courts. Both the Special and the People's Courts were established as important parts of the administration of justice during the Nazi regime.

All sixteen defendants named in the indictment were charged with criminal responsibility under the first three counts of the indictment. Count one charged participation in a conspiracy to commit war crimes and crimes against humanity; count two alleged the commission of war crimes against civilians of territories occupied by Germany and against members of the armed forces of nations at war with Germany after September 1939; count three charged the commission of crimes against humanity, including offenses against both German civilians and the nationals of occupied countries, after the outbreak of World War II. The specific offenses charged included murder, persecution on political, racial, and religious grounds, deportation and enslavement, plunder of private property, torture and other atrocities. Count four charged seven of the defendants with membership in the SS, the SD, or the Leadership Corps of the Nazi Party, all organizations declared to be criminal by the International Military Tribunal.

During the course of the trial the Tribunal ruled with respect to count one "that neither the Charter of the International Military Tribunal nor Control Council Law No. 10 has defined conspiracy to commit a war crime or crime against humanity as a separate substantive crime; therefore, this Tribunal has no jurisdiction to try any defendant upon a charge of conspiracy considered as a separate substantive offense." However, the Tribunal ruled further that count one "also alleges unlawful participation in the formulation and execution of plans to commit war crimes and crimes against humanity which actually involved the commission of such crimes. We therefore cannot properly strike the whole of count one from the indictment, but, insofar as count one charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crime against humanity, the Tribunal will disregard that charge." Judge Blair, in a separate opinion filed at the time of judgment, dissented from this ruling, declaring that the Tribunal should have declared that the military tribunals created under Ordinance No. 7 had jurisdiction over "conspiracy to commit" any and all crimes defined in Article II of Control Council Law No. 10.

Of the 14 defendants who stood trial to the end, ten were convicted on one or more counts, and four were acquitted on all counts.

The Justice Case was tried at the Palace of Justice in Nuernberg before Military Tribunal III. Early in June 1947, the presiding judge became ill, and for this reason the sessions of the Tribunal had to be temporarily suspended. Thereupon the Tribunal designated the other two members and the alternate member as commissioners of the Tribunal to hear the testimony of a number of available witnesses whose affidavits had been introduced in evidence by the prosecution and who had been requested for cross-examination by the defense. Accordingly, the commissioners held hearings to take the further testimony of 13 prosecution affiants on 3, 4, and 5 June 1947. The presiding judge still remained incapacitated due to severe illness. Consequently, on 19 June 1947, shortly before the beginning of the defense case, the Tribunal was reconstituted pursuant to Article II of Military Government Ordinance No. 7, and the alternate judge, who had been present throughout the sessions of the trial, replaced the incapacitated member. Hearings before the Tribunal or the commissioners of the Tribunal were held on 129 separate days. The trial, from indictment to judgment, lasted 11 months. The course of the trial and subsequent related proceedings is shown in the following table:

Indictment filed	4 January 1947
Arraignment	17 February 1947
Prosecution opening statement	5 March 1947
Defense opening statements	23 June 1947
Prosecution closing statement	13-14 October 1947
Defense closing statements	14-18 October 1947
Prosecution rebuttal closing	18 October 1947
Final statements of defendants	18 October 1947
Judgment	3-4 December 1947
Sentences	4 December 1947
Affirmation of sentences by the Military Governor of the United States Zone of Occupation	18 January 1949
Order of the Supreme Court of the United States denying Writs of Habeas Corpus.	2 May 1949

The English transcript of the Court proceedings, including the judgment, the separate opinion of Judge Blair, and the sentences, runs to 10,964 mimeographed pages. The prosecution introduced into evidence 641 written exhibits (some of which contained several documents), and the defense 1,452 written exhibits. The exhibits offered by the prosecution and the defense contained documents, photographs, affidavits, interrogatories, letters, charts, and other written evidence. Approximately 600 of these written exhibits were affidavits, more than 500 of which were introduced by the defense. The Tribunal and the members thereof sitting as commissioners heard the testimony of approximately 140 witnesses, including that of twelve of the defendants who elected to testify. Each of the defendants who testified was subject to examination on behalf of the other defendants. Many of the witnesses heard by the Tribunal itself, and all of the witnesses whose testimony was taken in the commission, were prosecution affiants who were called for cross-examination by the defense.

The case-in-chief of the prosecution began on 5 March 1947 and ended on 5 June 1947, subject to the understanding that several prosecution affiants requested for cross-examination by the defense and not immediately available for cross-examination, could be cross-examined by the defense during the defense case. The Tribunal was in recess between 28 May 1947 and 23 June 1947, during which period the commissioners of the Tribunals held hearings on three successive days. The defense case began on 23 June 1947 and ended on 26 September 1947. The Tribunal was in recess between 26 September 1947 and 13 October 1947, to give both the prosecution and the defense additional time to prepare the closing statements.

The members of the Tribunal and prosecution and defense counsel are listed on the ensuing pages. Prosecution counsel were assisted in preparing the case by Walter Rapp (Chief of the Evidence Division), Fred Niebergall (Chief of the Document Branch), Peter Beauvais, interrogator, and Arnold Buchtal and Henry Einstein, research and documentary analysts.

Selection and arrangement of the Justice Case material published herein was accomplished principally by Robert D. King, working under the general supervision of Drexel A. Sprecher, Deputy Chief Counsel and Director of Publications, Office U.S. Chief of Counsel for War Crimes. Arnold Buchtal, Paul H. Gantt, Gertrude Ferencz, Wolfgang Hildesheimer, Julia Kerr, and Walter Schonfeld assisted in selecting, compiling, editing, and indexing the numerous papers.

John H. E. Fried, Special Legal Consultant to the Tribunals, reviewed and approved the selection and arrangement of the material as the designated representative of the Nuernberg Tribunals.

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